

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF WISCONSIN

KINDRED REHAB SERVICES, INC.
d/b/a RehabCare,

Plaintiff

v.

Case No. 17-cv-910

MOUNT CARMEL HEALTH CARE, LLC
d/b/a BURLINGTON MEDICAL AND
REHAB CENTER, et al.,

Defendants.

JOINT MOTION TO AMEND SCHEDULING ORDER

Plaintiff, Kindred Rehab Services, Inc. d/b/a RehabCare (“RehabCare”), and Defendants¹ jointly move the Court to amend the Scheduling Order entered on December 14, 2017 (Dkt. 33). Specifically, the Parties request the Court extend the deadline to conclude discovery and the deadline to file dispositive motions. In support, the Parties state as follows:

1. As has been represented to the Court previously, there are four additional connected actions pending in four other District Courts, with a total of thirty defendants and thirty-one nursing facilities.² While separate, there are multiple overlapping issues and related

¹ The “Defendants” are, collectively, Mount Carmel Health Care, LLC d/b/a Burlington Medical and Rehab Center (“Burlington”); Colonial Manor Health Care, LLC d/b/a Colonial Medical and Rehabilitation Center (“Colonial”); Eastview Health Care, LLC d/b/a Eastview Medical and Rehabilitation Center (“Eastview”); San Luis Health Care, LLC d/b/a Maple Ridge Rehab and Care Center (“Maple”); North Ridge Health Care, LLC d/b/a North Ridge Medical and Rehabilitation Center (“North Ridge”); Sheridan Medical, LLC d/b/a Sheridan Medical Complex (“Sheridan”); and Woodstock Health Care, LLC d/b/a Waters Edge Rehab and Care Center (“Waters Edge”).

² The other four actions filed by RehabCare or its separate affiliates are styled: *RehabCare Group East, Inc. v. Forest Hills Health Care, LLC*, Case No. 17-cv-00390-JHP-JFJ; *RehabCare Group East, Inc. v.*

discovery issues involved that lead counsel for the plaintiffs and lead counsel for the defendants have been working through, particularly more review and production of electronically stored information (“ESI”) than originally anticipated. This has complicated the Parties’ efforts to meet the original scheduling order in this matter. Moreover, because of the cost of pursuing and defending the various matters, the parties have been engaged in settlement negotiations and have agreed to extend certain deadlines in the matters in order to facilitate those discussions.

2. The Parties are actively engaged in discovery, which they timely initiated and have actively pursued, but which is more onerous than originally expected. RehabCare served its first set of written discovery on each Defendant on December 28, 2017, two weeks after the Court issued the Scheduling Order. Defendants requested a short extension which RehabCare agreed to, and Defendants served their responses to RehabCare’s first sets of written discovery on February 19, 2018. Defendants served their first sets of written discovery on January 8, 2018 and RehabCare, with the same extension granted to Defendants, timely served its responses on February 26, 2018. RehabCare also produced 3,498 pages’ worth of documents in February. On the night of April 17, 2018, Defendants produced various contracts, and on April 18, 2018, Defendants produced additional documents. All Parties are continuing to review documents, including ESI (mostly emails). Indeed, RehabCare has nearly completed its initial review of over 60,000 emails and attachments in connection with Defendants’ discovery responses, and is actively working on additional productions. While the majority of the emails reviewed is not relevant and will not need to be produced, the initial review has been time consuming. Moreover, trial counsel for RehabCare will need to conduct a final review and privilege analysis. All Parties anticipate making supplemental, and potentially rolling, productions.

Bentwood Healthcare, LLC, et al., Case No. 4:17-cv-00540-ODS (W.D. Mo.); *RehabCare Group East, Inc. v. Adel Health Care Management, LLC, et al.*, Case No. 4:17-cv-244; and *Kindred Rehab Services, Inc. v. Cambridge Health Care, LLC*, Case No. 17-cv-00458 (S.D. Ohio).

3. The Parties in this matter are working on scheduling the depositions of Defendants' corporate representatives soon. However, lead counsel for the Parties here are the same lead counsel for the parties in the other four actions mentioned above, and scheduling has been complicated by deadlines in those cases. RehabCare has already taken the depositions of the corporate representatives of the defendants in the Northern District of Oklahoma and the Western District of Missouri actions on April 17 and 18, 2018. However, because RehabCare did not have the opportunity to review the documents produced by Defendants, RehabCare reserved the right to recall the corporate representatives for additional testimony.

4. In addition, the Parties have engaged in settlement discussions and several face-to-face and telephonic meetings. There was a face-to-face meeting among all the parties on March 21, 2018 in Louisville, Kentucky to discuss global settlement as well. In advance of the meeting, the Parties agreed to postpone the already-scheduled depositions of the defendants' corporate representatives in the Northern District of Oklahoma matter that were scheduled for that same day. The District Court for the Western District of Missouri ordered a mediation which occurred on April 12, 2018 in Kansas City, Missouri with Jill A. Morris, Director of the Mediation and Assessment Program for the Western District of Missouri. In that mediation, the parties discussed potential global resolutions of all five cases, including the instant matter. That mediation remains open and ongoing; there was a status call with the mediator on April 25, May 8, and May 14. There is a follow-up call on May 24. There is also a settlement conference scheduled in the Northern District of Oklahoma matter on June 22, 2018 with the Adjunct Settlement Judge Wogelmuth. All parties in all the cases are continuing to discuss and work through possible global resolution.

5. There are currently five trials scheduled across the five actions starting November 13, 2018 for Northern District of Oklahoma, January 14, 2019 for Eastern District of Wisconsin, January 22, 2019 for Southern District of Iowa, March 11, 2019 for Western District of Missouri, and September 2019 for Southern District of Ohio.³ Again, the lead counsel for all parties in all the cases are the same.

6. The chart below sets forth the currently scheduled deadlines the Parties seek to extend and the Parties' requested new deadlines:

Event	Current Deadline	Proposed Extended Deadline
Deadline to conclude discovery	7/20/18	10/18/18
Deadline to file dispositive motions and submit update regarding motion to sever, if any	8/24/18	11/21/18

7. These requested extensions would still occur before the pretrial compliance deadlines on December 27, 2018. However, the Parties do not object to the Court continuing the trial date if necessary to accommodate the requested extensions.

For the foregoing reasons, the Parties respectfully move the Court to extend the deadlines as set forth herein. A proposed order will be submitted to the Court.

³ The parties in the Oklahoma, Missouri, and Iowa actions have already filed a motion in those Courts for extensions of certain deadlines, which the Courts have all granted. In the Oklahoma and Missouri actions, the Courts further extended the scheduled trial dates.

Respectfully submitted,

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